

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

In the Matter of )

Implementation of the Local Competition )  
Provisions in the Telecommunications Act )  
of 1996 )

) CC Docket No. 96-98

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## **SUMMARY**

The Commission's Notice of Proposed Rulemaking in this docket seeks comment on an extensive variety of issues associated with implementation of new Sections 251, 252, and 253 of the Communications Act of 1934, as amended, including the implications for interconnection arrangements between local exchange carriers ("LECs") and commercial mobile radio service ("CMRS") providers. While Commission decisions in this docket will have significance for all aspects of the telecommunications marketplace, the Personal Communications Industry Association ("PCIA") believes that Sections 251 and 252 have only limited direct applicability to LEC-CMRS interconnection.

Under the Telecommunications Act of 1996, LEC-CMRS interconnection arrangements remain governed by Sections 332(c) and 201 of the Communications Act. Section 251 specifically ensures that its provisions are not to be construed in any way to alter Section 201. In fact, Section 251 clearly was not intended by Congress to address LEC-CMRS interconnection but rather is targeted at defining the transition to full competition in the wireline local exchange market. While increased competition in wireline local exchange services and facilities undoubtedly will benefit CMRS competition, there is no basis to apply a wireline regulatory plan to wireless services.

Thus, the Commission should not apply the terms of either Section 251(c) or 251(b) to LEC-CMRS interconnection negotiations and arrangements. Instead, the Commission should proceed to resolve issues and policies associated with CMRS-related arrangements in proceedings separate from this docket, such as CC Docket No. 95-185. PCIA urges the Commission in such proceedings to enforce clearly and vigorously the obligations of LECs with respect to CMRS interconnection.

Finally, CMRS providers are not local exchange carriers and should not be subject to the requirements imposed by Sections 251(b) or 251(c) on LECs. Congress made this determination when it passed the Telecommunications Act of 1996, and nothing has changed in the past three months to alter this assessment. Moreover, CMRS is not a substitute for wireline local exchange service for a substantial number of subscribers. There thus is no reason for the Commission to exercise its discretion under Section 153(44) to include CMRS licensees within the definition of local exchange carrier.

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**COMMENTS OF THE PERSONAL  
COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA")<sup>1</sup> hereby submits its initial comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned docket.<sup>2</sup> The *Notice* seeks "to adopt rules to implement the local competition provisions of the Communications Act of 1934, as amended by the *1996 Act*,<sup>3</sup> particularly Section 251 "<sup>4</sup> The Commission seeks comment on several issues

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<sup>1</sup> PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

<sup>2</sup> FCC 96-182 (Apr. 19, 1996) ("*NPRM*" or "*Notice*").

<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("*1996 Act*").

<sup>4</sup> *Notice*, ¶ 2.

involving commercial mobile radio service ("CMRS") licensees, and other aspects of the Commission's action in this docket could have significant implications for the wireless industry. PCIA details below its interpretation of the relationship between new Sections 251, 252, and 253 of the Communications Act and Sections 201 and 332(c), as well as the rights and obligations of CMRS operators as affected by Sections 251, 252, and 253.

While Section 251 is not intended to govern the interconnection arrangements between local exchange carriers ("LECs") and CMRS providers, PCIA nonetheless believes that the Commission's actions in this proceeding will be significant for CMRS licensees. Specifically, increasing the level of competition in the wireline local exchange market and increasing the sources of interconnection opportunities will undoubtedly enhance competition in the CMRS market, and improve the ability of CMRS licensees to offer services on a comparable competitive footing with incumbent LECs. PCIA thus urges the Commission to ensure that it fully enforces the directives of Sections 251, 252, and 253 in order to promote wireline local exchange competition.<sup>5</sup>

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<sup>5</sup> While the Commission notes that this proceeding involves implementation of Section 253, the *Notice* contains no specific discussion of or proposals for this statutory section. PCIA observes that Section 253(e) specifically states that "[n]othing in this section shall affect the application of section 332(c)(3) to commercial mobile radio service providers." 47 U.S.C. § 253(e).

**I. CMRS LICENSEE INTERCONNECTION RIGHTS ARE GOVERNED BY SECTIONS 332(C) AND 201 OF THE COMMUNICATIONS ACT, AND THESE RIGHTS ARE NOT ALTERED BY NEW SECTION 251<sup>6</sup>**

The Commission seeks comment "on whether interconnection arrangements between incumbent LECs and commercial mobile radio service (CMRS) providers fall within the scope of section 251(c)(2)."<sup>7</sup> The Commission also observes that, "[i]f CMRS providers seeking interconnection from incumbent LECs fall within the purview of section 251(c)(2), or of section 251(b)(5), there arises the question of the relationship between section 251 and another recent addition to the 1934 Act that also addresses interconnection between CMRS providers and other common carriers, section 332(c)," and requests comment on the relationships of the sections.<sup>8</sup>

As detailed below, PCIA believes that Sections 201 and 332(c) of the Communications Act continue to define the controlling standards for interconnection between CMRS licensees and LECs. Section 251 was adopted by Congress to guide the establishment of competition in the marketplace for local wireline services, a goal that necessarily must direct the Commission's efforts to implement the statutory provisions. At the same time, Section 251 provides useful insight about Congressional

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<sup>6</sup> This section responds to Section II.B.2.e.(2) of the *Notice*, concerning the applicability of Section 251(c)(2) to CMRS licensee interconnection arrangements.

<sup>7</sup> *Notice*, ¶ 166.

<sup>8</sup> *Id.*, ¶ 169.

thinking regarding the elements of interconnection and the rights of entities seeking to interconnect with the facilities of local exchange carriers -- which thinking can be taken into account in the Commission's establishment of rules and policies to govern CMRS-LEC interconnection under Sections 332(c) and 201.<sup>9</sup>

**A. The CMRS-LEC Interconnection Standards Are Defined by Sections 332(c) and 201 of the Communications Act**

Section 332(c)(1)(B) of the Communications Act of 1934, as amended, provides:

Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this title. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this chapter.<sup>10</sup>

Section 201(a) in turn states:

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<sup>9</sup> Although Part 22 licensees have been entitled to obtain interconnection from LECs for over ten years, and that same right has been extended to all CMRS operators, that right has been effectively limited in the real world experience of CMRS providers. *See The Need To Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 59 Rad. Reg. 2d 1275 (1986) (Policy Statement); *Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1497-98 (1994) (Second Report and Order) ("CMRS Second Report and Order"). It is essential that the Commission maintain its efforts to apply Section 201 to the interconnection arrangements between LECs and CMRS operators. PCIA urges the Commission to continue to address LEC-CMRS interconnection proceedings separate from the Section 251 implementation proceedings.

<sup>10</sup> 47 U.S.C. § 332(c)(1)(B).



It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.<sup>11</sup>

Finally, Section 201(b), in relevant part, provides that, "[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification that is unjust or unreasonable is declared to be unlawful . . . The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter."<sup>12</sup>

The Commission's CMRS-LEC interconnection policies were enunciated and developed in connection with Part 22 services, where the Commission relied upon Section 201 to require LECs to interconnect with Part 22 licensees.<sup>13</sup> In a decision implementing Sections 3(n) and 332 of the Communications Act, as amended by

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<sup>11</sup> 47 U.S.C. § 201(a).

<sup>12</sup> 47 U.S.C. § 201(b).

<sup>13</sup> See *CMRS Second Report and Order*, 9 FCC Rcd at 1493.

Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993,<sup>14</sup> the Commission "require[d] LECs to provide reasonable and fair interconnection for all commercial mobile radio services."<sup>15</sup> In addition to directing LECs to provide the type of interconnection reasonably requested by all CMRS providers, the Commission preempted state and local regulation of the kind of interconnection to which CMRS providers are entitled.<sup>16</sup> The Commission also enunciated the following requirements to be considered as part of LEC provision of reasonable interconnection to CMRS providers:

- The principle of mutual compensation applies, under which LECs shall compensate CMRS providers for the reasonable costs incurred in terminating traffic that originates on LEC facilities, and CMRS licensees shall compensate LECs in connection with mobile-originated traffic terminating on LEC facilities.<sup>17</sup>

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<sup>14</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993) ("*1993 Budget Act*").

<sup>15</sup> *CMRS Second Report and Order*, 9 FCC Rcd at 1497-98. The Commission specifically indicated that the right of mobile service providers to interconnect with LEC facilities "flows from the common carrier obligation of LECs 'to establish physical connections with other carriers' under Section 201 of the Act." *Id.* at 1497 (footnote omitted). See also *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, FCC 95-149, at ¶ 5 (Apr. 20, 1995) (Second Notice of Proposed Rule Making).

<sup>16</sup> *CMRS Second Report and Order*, 9 FCC Rcd at 1498. The Commission based the preemption decision on its finding that separate interconnection arrangements for interstate and intrastate commercial mobile radio services are not feasible.

<sup>17</sup> *Id.*

- LECs must establish reasonable charges for interstate interconnection provided to CMRS licensees.<sup>18</sup>
- In determining the type of interconnection that is reasonable for CMRS facilities, the LEC may not deny a CMRS provider any form of interconnection arrangement that the LEC makes available to any other carrier or customer, unless the LEC can demonstrate that the provision of such interconnection arrangement is not technically feasible or is not economically reasonable.<sup>19</sup>

The Commission's recent Notice of Proposed Rulemaking in CC Docket No. 95-185 confirms the Commission's requirement that, pursuant to Section 201 of the Communications Act, LECs must offer interconnection to CMRS providers on reasonable terms and conditions, and must do so pursuant to mutual compensation principles.<sup>20</sup>

The Commission thus has consistently acted pursuant to Section 201 of the Communications Act to define the obligations of LECs and the rights of CMRS licensees with respect to interconnection.

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, FCC 95-505, ¶ 1 (Jan. 11, 1996) (Notice of Proposed Rulemaking) ("*LEC-CMRS Interconnection NPRM*").

**B. Section 251 Does Not Alter Reliance on Section 201 To Form the Basis for LEC Interconnection Obligations With Respect to CMRS Facilities**

The provisions of Section 251 do not replace, limit, or supersede the mandates of Section 201 of the Communications Act. Overall, most of the provisions of Section 251 were intended to serve a more limited role than is contemplated by Section 201.<sup>21</sup> Specifically, Section 251 is intended primarily to provide the mechanism for developing competition in the wireline local exchange marketplace. In adopting Section 251, Congress did not appear to be addressing wireless competition in this marketplace but instead was focused on how to promote the emerging competition among providers of wireline local exchange offerings.<sup>22</sup>

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<sup>21</sup> Section 251(a) does impose general obligations on all telecommunications carriers with respect to interconnection and installation of network features, functions, and capabilities; Section 251(e) addresses numbering administration, which also necessarily affects all telecommunications carriers; and Section 251(i), discussed below, ensures that Section 201 remains unchanged by the provisions of Section 251.

<sup>22</sup> The *Notice* asks whether "it would be sound policy for the Commission to distinguish between telecommunications carriers on the basis of the technology they use." *Notice*, ¶ 169. Clearly, any unreasonable discrimination based merely on technology used would not be permissible. As the Commission has found in the interconnection context, CMRS licensees are co-carriers with LECs. There are a number of areas of Commission regulation where it is essential that CMRS operators be treated on a non-discriminatory basis with other telecommunications carriers. One such area is numbering. In other cases, however, technical or other considerations may mandate differential treatment that is not unreasonably discriminatory. For example, CMRS switches may not be able to accommodate certain of the interim number portability proposals being considered by the Commission. Moreover, Section  
(continued...)

Initially, Section 251(i) states that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201."<sup>23</sup> The legislative history explicitly confirms this conclusion, "mak[ing] clear the conferees' intent that the provisions of new section 251 are in addition to, and in no way limit or affect, the Commission's existing authority regarding interconnection under section 201 of the Communications Act."<sup>24</sup> Thus, the obligations imposed and rights granted by Section 201 and the permissible jurisdiction that may be exercised by the Commission remain unaltered by Section 251.

Beyond the absence of any constraining effect for Section 201, it is clear from the language of Section 251 itself as well as legislative history statements that Section 251 was not in any way intended to displace the statutory principles governing interconnection and related matters involving CMRS licensees. Section 251 was meant to provide the baseline policies to govern the transition to full competition in the wireline local exchange marketplace. As such, Section 251 was not intended to reach

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<sup>22</sup>(...continued)

332 preempts state entry and rate regulation of CMRS offerings, carving out a jurisdictional exception to the standards imposed by Section 2(b) of the Communications Act for services provided over other technologies.

<sup>23</sup> 47 U.S.C. § 251(i).

<sup>24</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 11 (1996) ("*Joint Explanatory Statement*").

CMRS but instead was addressed to the emerging competitors in the landline market -- the "ALECs" and the "CLECs."

Under Section 251(c), incumbent local exchange carriers have certain duties to a "requesting telecommunications carrier." One of these duties is to provide interconnection to the LEC network in order to provide telephone exchange service and exchange access. While PCIA agrees with the Commission that "telephone exchange service" is broad enough to encompass at least some CMRS,<sup>25</sup> the concepts of "telephone exchange service" and "exchange access" traditionally have been associated with wireline service. The service areas associated with various classes of CMRS have always differed from wireline exchange areas. The use of "telephone exchange access" and "exchange access" to define the entities intended to benefit from the provisions of Section 251 reflects Congressional intent that this section primarily govern wireline interconnection.

Moreover, the fact that there is a question whether all CMRS could take advantage of the provisions of Section 251(c)<sup>26</sup> underscores the fact that Section 251 is not intended to apply to CMRS. There is no basis to believe that Congress would distinguish among different classes of CMRS with respect to essential interconnection

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<sup>25</sup> Notice, ¶ 168.

<sup>26</sup> The Notice asks parties to comment "on which if any CMRS, including voice-grade services, such as cellular, PCS, and SMR, and non-voice-grade services, such as paging, fit [the] definition" of telephone exchange service. *Id.*

rights less than three years after directing the Commission to establish regulatory parity among competing wireless mobile services -- especially where Congress has failed to identify the line it is seeking to draw or to explain the rationale for disparate treatment of competing services.

The legislative history confirms the focus of Section 251 on the wireline marketplace. The *Joint Explanatory Statement*, in discussing the House version of the legislation, notes the discussion of requirements applicable to LECs "as competitors enter the local market."<sup>27</sup> In the same vein, the *Joint Explanatory Statement* points out terms and conditions that "are integral to a competing provider seeking to offer local telephone services over its own facilities."<sup>28</sup> In the context of the language finally adopted in the statute, the *Joint Explanatory Statement* references "'new entrants' into the local exchange market."<sup>29</sup> These statements all confirm the conclusion apparent from the face of the statutory language itself -- that Section 251 generally is not intended to apply to the interconnection rights of CMRS providers.

The Commission accordingly should refrain from attempting to use Section 251 as the model for all interconnection relationships. Rather, Section 251 should be implemented to achieve its intended goals. At such time as wireline marketplace

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<sup>27</sup> *Joint Explanatory Statement* at 7.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 8.

competition fully emerges, and CMRS operators are full-fledged competitors to wireline local exchange carriers, it then *may* be appropriate for Congress and the Commission to adopt a new regulatory structure that recognizes that full and equal competition and that governs all potentially competing services. At this time, however, there is no reason for the Commission to seek to fit CMRS providers into the regulatory scheme contemplated by Section 251.

While Section 251 does not override or otherwise displace Section 201 for determining the appropriate interconnection obligations of LECs to CMRS providers, the provisions of the section nonetheless can be referenced to provide guidance concerning Congressional thoughts about the nature of interconnection and other obligations. The *1996 Act*, in Section 251 and elsewhere, sets out the Congressional viewpoint on the components of a number of duties previously imposed by the Commission on LECs in their dealings with other CMRS licensees.<sup>30</sup> These requirements thus can be taken into account by the Commission in separate proceedings addressing LEC-CMRS interconnection issues.

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<sup>30</sup> In the event that the Commission determines that Section 201 and Section 251 may both apply to interconnection arrangements sought by a CMRS licensee, and further decides that the two statutory sections impose different requirements, the CMRS licensee should be permitted to select the regulatory structure under which it wishes to proceed. *See Notice*, ¶ 69.



**II. PRICING OF LEC-CMRS INTERCONNECTION ARRANGEMENTS  
LIKEWISE CONTINUES TO BE GOVERNED BY SECTION 201 AND  
NOT SECTION 251<sup>31</sup>**

The *Notice* concludes that the concept of transport and termination of telecommunications in Section 251(b)(5), which imposes on LECs "[t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications,"<sup>32</sup> apparently includes "traffic passing between LECs and CMRS providers."<sup>33</sup> As discussed above, however, Section 251 is not intended to address the pricing of interconnection between LECs and CMRS licensees. Thus, the Commission need not decide in this proceeding whether the terms and requirements of Section 251(b)(5) are applicable to LEC-CMRS interconnection.

Rather, the Commission retains authority under Section 201 to set the standards for interconnection between LECs and CMRS. This authority includes defining the nature of permissible compensation arrangements between a LEC and a CMRS licensee. In that regard, the Commission should promptly complete its CC Docket No. 95-185 proceeding, since different statutory standards apply to the issues presented in that rulemaking as are found under Section 251.

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<sup>31</sup> This section responds to Section II.C.5.c. of the *Notice*, concerning the applicability of Section 251(b)(5) to CMRS licensee interconnection arrangements.

<sup>32</sup> 47 U.S.C. § 251(b)(5).

<sup>33</sup> *Notice*, ¶ 230.

PCIA has actively participated in the CC Docket No. 95-185 proceeding, and believes that the record in that proceeding is ready for resolution, at least with respect to the adoption of interim compensation arrangements. In the event that the Commission nonetheless decides to combine the LEC-CMRS interconnection matters with the issues raised in this proceeding, PCIA hereby specifically incorporates the comments and reply comments it has filed in CC Docket No. 95-185.<sup>34</sup>

In addressing the compensation standards for interconnection, it is essential for the Commission to bear in mind that action is necessary. Existing compensation arrangements for cellular carriers -- the broadband CMRS licensees with the most experience with obtaining LEC interconnection arrangements -- are inequitable and economically inefficient. Virtually without exception, such arrangements result in the CMRS provider paying the LEC on all calls, and the LEC paying the CMRS provider on no calls. Thus, on an interim basis, the Commission should mandate bill and keep for all network elements from the tandem switch to the end user. The costs of the trunks interconnecting the CMRS switch and the LEC switch should be shared. Such compensation arrangements are appropriate because CMRS and LEC networks perform essentially identical functions. bill and keep is administratively simple, PCS/LEC traffic

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<sup>34</sup> Comments of the Personal Communications Industry Association, CC Dkt. No. 95-185 (filed Mar. 4, 1996); Reply Comments of the Personal Communications Industry Association, CC Docket No. 95-185 (filed Mar. 25, 1996).

flows are roughly equivalent in both directions, and bill and keep will promote truly even traffic flows as CMRS providers and LECS are accorded parity of treatment.

As with broadband CMRS, existing paging interconnection agreements are entirely one-sided. Even though traffic flows are one hundred percent mobile-terminating, paging providers pay LECs for all calls, and receive compensation for none. Because all traffic flows from the LEC to the narrowband CMRS licensee, the LEC should pay the full cost of the facilities connecting its switch to the CMRS provider's network. In addition, narrowband CMRS operators should be entitled to recover the reasonable costs of the network facilities used in terminating calls.

The Commission should mandate these compensation mechanisms for both interstate and intrastate traffic. LECs have been able to use state jurisdiction over intrastate interconnection as a shield against fair compensation arrangements, and some states have explicitly denied compensation to CMRS providers. Moreover, CMRS services are inherently interstate; service areas transcend state lines and classification of individual calls as interstate or intrastate often is arbitrary. The Commission has authority to preempt inconsistent state requirements under Section 332, which articulates a pervasive federal regulatory scheme for CMRS and preempts state jurisdiction over CMRS rates and entry, and under the inseverability doctrine

enunciated in *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 369 (1986).<sup>35</sup>

### **III. CMRS PROVIDERS ARE NOT LOCAL EXCHANGE CARRIERS REGULATED BY SECTION 251<sup>36</sup>**

The Commission seeks comment on "whether, and to what extent, CMRS providers should be classified as LECs."<sup>37</sup> As the *Notice* points out, the definition of "local exchange carrier" in the Communications Act explicitly excludes commercial mobile service providers, "except to the extent that the Commission finds that such service should be included in the definition of such term."<sup>38</sup> The legislative history concerning this definition indicates that Congress desired to give the Commission flexibility, "if *future* circumstances warrant, [to] include CMS providers which provide telephone exchange service or exchange access in the definition of 'local exchange carrier.'"<sup>39</sup>

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<sup>35</sup> PCIA Written Ex Parte Presentation in WT Docket No. 96-6 (filed May 6, 1996).

<sup>36</sup> This section responds to the introductory paragraph of Section II.C of the *Notice* concerning the treatment of CMRS licensees as LECs under Section 251(b) and to paragraph 167 under Section II.B.2.e.(2).

<sup>37</sup> *Notice*, ¶ 195.

<sup>38</sup> 47 U.S.C. § 153(44).

<sup>39</sup> *Joint Explanatory Statement* at 3 (emphasis added).

At this time, there is no rational basis for classifying CMRS providers as local exchange carriers subject to the mandates of either Section 251(b) or Section 251(c).<sup>40</sup> Recent Commission documents correctly reflect the fact that CMRS is not yet a substitute for wireline local exchange service for a substantial number of subscribers.<sup>41</sup> Granting increased flexibility to CMRS licensees to provide fixed local loop and other CMRS services does not alter this conclusion. Moreover, CMRS licensees lack the control over essential facilities that at least in part underlies the adoption of Section 251, further highlighting the fact that there is no rational basis for categorizing CMRS operators as LECs.<sup>42</sup>

The Commission asks whether it may classify a CMRS provider as a LEC for certain purposes but not for others.<sup>43</sup> Given the statutory definitions and the purposes of Section 251 as discussed above, the Commission can more rationally achieve its goals of imposing some requirements on CMRS licensees by applying the specific

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<sup>40</sup> PCIA supports the Commission's tentative conclusion that "CMRS providers are not obliged to provide interconnection to requesting telecommunications carriers under the provision of section 251(c)(2). *Notice*, ¶ 167.

<sup>41</sup> *E.g.*, *LEC-CMRS Interconnection NPRM* at ¶ 2; *Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, FCC 96-17, at ¶ 1 (Jan. 25, 1996) (Notice of Proposed Rule Making). *See* 47 U.S.C. § 332 (c)(3)(A).

<sup>42</sup> The fact that CMRS licensees are not LECs for purposes of Section 251 does not diminish their status as co-carriers with LECs.

<sup>43</sup> *Notice*, ¶ 195.

requirement without engaging in the contortions that would be required to treat CMRS licensees as LECs for some purposes and not others.

Similarly, the *Notice* queries about classifying some CMRS licensees as LECs and not others.<sup>44</sup> While it is clear that it is permissible to draw lines between classes of CMRS operations, those distinctions must be fully warranted in light of the presumption in Section 332 and the Commission's implementing orders for parity in regulatory treatment of CMRS classes. Since there currently is no basis for treating any CMRS licensees as LECs for purposes of Section 251, it is not necessary or appropriate to speculate about whether it would be permissible for the Commission to classify some CMRS providers as LECs and not others.

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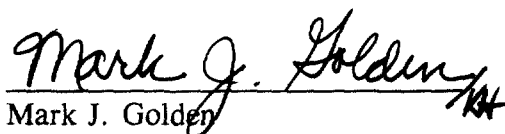
<sup>44</sup> *Id.*

#### IV. CONCLUSION

The Commission should conclude that this rulemaking is not the appropriate proceeding in which to address LEC-CMRS interconnection obligations, since Section 251 was not intended to govern those relationships. Section 251 simply was not intended to address CMRS interconnection rights. Likewise, it is clear that CMRS licensees are not local exchange carriers subject to the requirements of either Section 251(b) or 251(c). At the same time, the Commission should carefully craft the rules implementing the provisions of Section 251, since the opening up of the wireline local exchange marketplace should also benefit CMRS competition as well.

Respectfully submitted,

**PERSONAL COMMUNICATIONS INDUSTRY  
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A handwritten signature in dark ink, reading "Mark J. Golden" with a stylized flourish at the end.

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